

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

YVETTE WEINSTEIN, CHAPTER 7
TRUSTEE of the JOSH MOLINE
BANKRUPTCY ESTATE,

Plaintiff,

v.

VILLAGE OAKS MORTGAGE LLC; et al.,

Defendants.

2:10-CV-0095-LRH-PAL

ORDER

Before the court is defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") motion to strike or in the alternative to file a sur-reply filed on March 4, 2010. Doc. #17.

I. Facts and Background

Plaintiff Yvette Weinstein ("Weinstein"), the Chapter 7 Trustee of the John Moline bankruptcy estate, filed an action against defendants arising out of a mortgage loan and deed of trust entered into by Moline in 2006. The complaint was filed in state court.

Wells Fargo removed the action to federal court and Weinstein filed a motion to remand (Doc. #7). Weinstein's motion to remand was based on a procedural defect in the removal petition. Wells Fargo filed an opposition to the motion to remand. Doc. #8. Subsequently, Weinstein filed a reply. Doc. #16. However, Weinstein's reply abandoned her previous grounds for remand and raised several new issues regarding the sufficiency of the court's jurisdiction. Thereafter, Wells

1 Fargo filed the present motion to strike Weinstein's reply or for leave to file a sur-reply. Doc. #17.

2 **II. Discussion**

3 The court recognizes that Weinstein has raised several new issues in her reply that have no
4 correlation to her initial motion to remand. Generally, a new issue cannot be raised for the first time
5 in a reply. *See Northwest Acceptance Corp.*, 841 F.2d 918 (9th Cir. 1988); *United States v. Birtle*,
6 792 F.2d 846 (9th Cir. 1986). The reasoning behind this general rule is that by filing a reply brief
7 which abandons the arguments asserted in the original motion, a plaintiff strips the defendant's
8 ability to respond to those new arguments.

9 In the motion to strike or leave to file a sur-reply, Wells Fargo outlines several arguments
10 that it wishes to fully brief to the court. Accordingly, rather than striking the reply, the court shall
11 grant Wells Fargo leave to file a sur-reply. Wells Fargo shall have ten (10) days after the entry of
12 this order to file a sur-reply with the court that shall not exceed ten (10) pages in length.

13 IT IS THEREFORE ORDERED that defendant's motion to strike or for leave to file a sur-
14 reply (Doc. #7) is GRANTED.

15 IT IS SO ORDERED.

16 DATED this 26th day of March, 2010.



17
18
19 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE